

## Article History

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## Controversy over the Validity of Fasiq Guardians in Marriage

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**ABSTRACT** This article aims to analyzing the validity of marriage for guardians who have a wicked nature in religion. The research method used is qualitative research with an exploratory analysis approach, namely analyzing in depth how the legal status of a wicked guardian is by comparing the opinions of Imam al-Kasani and Imam al-Syirazi. The data source used is a secondary data source, namely *Book The Storm of Sana'i* written by Imam al-Kasani and the *Book al-Muhadzdzab* Imam Syirazi's writings and books and articles based on OJS (Open Journal System) about the wali. Data processing techniques are carried out by processing library materials (library research). Techniques in analyzing data analyzed with descriptive analysis using reduction, display, and verification techniques. The findings: First: Imam al-Kasani allows a fasiq guardian to become a guardian in marriage with the argument of the Qur'an Surah al-Baqarah verse 232 and two hadiths from Imam Muslim, while Imam al-Syirazi prohibits a fasiq guardian from becoming a guardian in marriage and the marriage is invalid with the argument of the hadith from Imam Syafi'i, Aisyah ra and Abu Hurairah. Second, based on the results of the analysis, Imam al-Kasani does not make guardians a condition and harmony in marriage, even if necessary, he allows guardians who are fasiq and the legal method of *istinbath* is *qiyas* and *istihsan*, whereas Imam al-Syirazi makes guardians a condition and harmony in marriage and requires the guardian to be fair and the method of *istinbat* uses the evidence of hadith.

**KEYWORDS** : *Guardian; Marriage; Wicked*

### INTRODUCTION / INTRODUCTION

Marriage in Islam is a sacred contract and has religious value. (Mardani, 2011). In its implementation, there are a number of pillars and requirements that must be met so that the marriage is considered valid according to sharia, one of which is the presence of a guardian for the bride. The guardian in marriage functions as a representative of the family and protector for women, as well as a party that ensures that the marriage is carried out in accordance with sharia values. (Khairuddin, 2023).

What if a father who is known to be fond of gambling, neglecting prayers, or even proven to have committed corrupt practices, remains the legal guardian for his daughter in a marriage contract? This question is not merely speculation, but reflects the reality that often occurs in society.

On the one hand, Islam places the guardian as a moral figure who guarantees the continuation of the marriage contract according to sharia. However, on the other hand, there are many guardians who do not reflect moral and spiritual integrity as a Muslim. Furthermore, can the immorality of a guardian invalidate the validity of the marriage he represents? This is a critical issue that has sparked a long debate among scholars, including two great figures—Imam al-Kasani from the Hanafi school of thought and Imam al-Syirazi from the Syafi'i school of thought—who offer different views on the validity of a fasiq guardian. This difference opens up space for in-depth discussion about the boundaries between formal legality and moral propriety in Islamic marriage law.

In the practice of the lives of Indonesian Muslim communities, especially in rural areas

and areas with low levels of religious education, it is not uncommon to find cases of marriage guardians who have a bad reputation in terms of morals and religion.(Ismail, 2022). For example, a father or uncle who becomes a guardian in his daughter's marriage contract, even though the wider community knows that he often misses prayers, is involved in gambling, gets drunk, and even has a criminal record. Ironically, these conditions are often considered normal and do not affect the course of the marriage contract process. Officials from the Office of Religious Affairs (KUA) and community leaders often turn a blind eye, as long as the guardian's lineage relationship with the prospective bride is fulfilled(Sari & Sasmito, 2022). In many cases, public understanding is still based on the assumption that as long as someone has a legitimate blood relationship and has not changed religion, then he is still legally eligible to be a marriage guardian—without considering his moral and religious integrity.(Misran & Murdiana, 2019).

This social phenomenon raises fundamental questions in Islamic law: does a person's immoral status invalidate his/her rights as a guardian in a marriage contract? If a guardian openly violates the basic principles of Islamic teachings, is he/she still worthy of representing the will of the sharia in a sacred contract? This debate not only occurs in social practice, but has also long been an important discourse in classical fiqh literature. Differences of opinion among scholars, such as Imam al-Kasani from the Hanafi school who is relatively lenient regarding the validity of a fasiq guardian, and al-Syirazi from the Syafi'i school who emphasizes the requirements of justice, reflect the tension between the social reality of Muslims and the normative demands of sharia teachings. Therefore, a study of the opinions of these two figures is very important to answer the doubts of the community and provide a scientific basis for practices that have taken root in society.

Legally, the marriage law system in Indonesia has strictly regulated the conditions and pillars of marriage in Law Number 1 of 1974 concerning Marriage and the Compilation of Islamic Law (KHI) which is the main reference in implementing marriage for Muslims.(Zaki, 2015). Article 14 and Article 20 of the KHI emphasize that a marriage guardian must be a man, Muslim, mature, sane, and not in ihram. However, there is no explicit affirmation regarding the moral and justice aspects ('adalah) of a guardian, such as

whether he must be pious or not fasiq. This opens up quite a lot of room for interpretation and implementation in the field, especially regarding the legal status of a guardian who is socially known as a sinner or not religiously obedient.(Faisal & Nasution, 2021).

The absence of explicit provisions regarding the moral standards of a guardian in Indonesian legislation creates a legal vacuum in certain cases, so that reference is returned to the opinions of classical Islamic jurisprudence scholars.(Efendy & Rahmah, 2016). In this context, there is a significant difference of opinion between Imam al-Kasani who tends to allow a fasiq guardian to remain a marriage guardian as long as he meets the requirements of lineage and religion, with Imam al-Syirazi who requires justice ('adalah) as a requirement for the validity of a guardian. This difference is important to be studied academically, because it can provide legal and sociological considerations regarding practices that occur in society and as a consideration in the preparation of Islamic legal policies in Indonesia in the future.(Gunawan et al., 2022).

In this context, one of the important issues that is often debated among fuqaha (Islamic jurisprudence scholars) is the moral and religious quality of a guardian, especially if the guardian is classified as fasiq—that is, someone who openly commits a major sin or continues to commit minor sins without repentance. This wickedness raises important questions: Can the status of being fasiq invalidate a person's validity as a guardian in marriage? Is a fasiq guardian still valid according to sharia, or must he be replaced by another guardian who is more just?

In classical fiqh literature, the difference of views on this issue is quite striking. Imam al-Kasani, a prominent scholar in the Hanafi school, and al-Syirazi, a prominent scholar in the Syafi'i school, provide different arguments in assessing the validity or otherwise of a fasiq guardian in a marriage. Imam al-Kasani tends to be more lenient regarding the status of a fasiq guardian, while al-Syarizi is stricter and requires justice ('adalah) as an absolute requirement in guardianship.

This difference is not merely a theoretical issue, but has practical implications in contemporary Muslim society, including in Indonesia. In practice, there are many marriage guardians who come from social backgrounds that are problematic morally and religiously.

Therefore, understanding the differences of opinion of classical scholars on this issue can be an important basis in making policies and fatwas on marriage law.

This research is relevant to reviewing the limits and conditions for guardianship in marriage from the perspective of two major schools of thought, as well as understanding the normative and methodological basis used by each ulama in determining the validity of a fasiq guardian. Thus, this study not only enriches the body of Islamic legal thought, but also contributes to the preparation of family law that is responsive to social reality.

The discussion on marriage guardians has become an object of discussion by academics from various perspectives in their discussions, including First; Theory and Concept:(Jalil & Wirnanda, 2020);(Ismail, 2022);(Tulab, 2017);(Nurdin, 2022);(Fitri & Miftahuddin, 2023). Second, case study:(Misran & Murdiana, 2019);(Ayu Lestari & Darlius, 2025);(Khairuddin, 2023). Third, the resolution of guardian problems:(Syailendra Sabdo Djati, 2020);(Shodikin, 2016). Fourth, the types of guardians who are absolutely prohibited:(Moch. Azis Qoharuddin, 2018). Fifth, the existence of a guardian in marriage:(Mustakim & Arham, 2024);(Gunawan et al., 2022). From various previous studies on guardians in marriage, this study complements the existing dimensions in studying the object of guardianship in marriage, namely studying the theory and concept of guardians. However, what is different and new from various previous studies is that this paper critically examines the validity of a wicked guardian in marriage by analyzing the thoughts of two scholars from two different schools of thought, namely Imam al-Kasani and Imam al-Syirazi

The study of the validity of a fasiq guardian in marriage has a very high urgency, both in theoretical and practical terms. In a theoretical context, this issue is directly related to the differences in views of scholars of the schools of thought regarding the requirements of a guardian in a marriage contract, especially regarding the requirement of 'adalah (moral and religious justice). This debate is reflected in the views of two important figures in the classical fiqh tradition, namely Imam al-Kasani, a prominent scholar of the Hanafi school in his work Bada'i as-Sana'i, who tends to allow a fasiq guardian to still carry out a marriage contract,

and Imam al-Syirazi, a scholar of the Syafi'i school through his monumental work al-Muhadzdzab, who requires justice as an important part of the validity of guardianship. These two views show the existence of different legal constructions in assessing the moral eligibility of a guardian, and therefore it is important to study them in depth.

Meanwhile, in practice, the social reality of Muslim society in Indonesia often shows a situation that contradicts the values of piety in the Shari'a. Many marriage guardians are found to be generally known as perpetrators of major sins, such as leaving prayers, getting drunk, gambling, or being involved in criminal behavior, but still carry out their daughter's marriage contract and are considered legally valid by society and religious officials. This is exacerbated by the absence of clear regulations in the Compilation of Islamic Law (KHI) regarding moral requirements or 'adalah for marriage guardians, thus opening up wide room for interpretation and potentially causing legal inequality.

Given these conditions, this study is very important to review and compare the views of these two great figures as a basis for understanding the limits of the sharia of the validity of guardians in marriage contracts. This study will not only enrich the treasury of comparative fiqh thought, but also provide a real contribution to efforts to reformulate contextual Islamic family law and answer the moral challenges of modern society, especially in Indonesia.

## METHODS / METHODS

The research method used is qualitative research with an exploratory analysis approach, namely analyzing in depth the legitimacy of a wicked guardian to become a guardian in marriage. The data source used is a secondary data source, namely the Book of *The Storm of Sana'i* written by Imam al-Kasani and the Book *al-Muhadzdzab* Imam Syirazi's writings and books and articles based on OJS (Open Journal System) about marriage guardians. Data processing techniques are carried out by processing library materials (library research). Techniques in analyzing data analyzed with exploratory descriptive analysis using reduction, display, and verification techniques.

## RESULTS / FINDINGS AND DISCUSSION

## The Concept of Guardians According to Imam al-Kasani and Imam al-Syirazi

In the view of Imam al-Kasani and the majority of scholars from the Hanafi school, the presence of a guardian in a marriage contract is not included in the pillars that determine whether a marriage is valid or not. They argue that a marriage contract is still valid even if it is carried out without the presence of a guardian, as long as the other conditions that have been stipulated in the sharia are met. This approach is based on the principle that a woman who has reached puberty and is of sound mind, whether she is still a virgin (*bikr*) or a widow (*thayyib*), has full rights over herself to marry herself to the man of her choice.

This opinion arises from the understanding that in Islam, legally competent adult women have the legal capacity (*ahliyyah*) to act in personal matters, including marriage. Therefore, according to Imam al-Kasani, there is no prohibition on women who meet these requirements from entering into a marriage contract independently, as long as the marriage does not conflict with the principles of the Shari'a, such as the prohibition on marrying a non-Muslim man, or with a party who falls into the category of *mahram* in terms of *nasab*, arrangement or cause of marriage.

This view shows the character of the Hanafi school of law which tends to be rational and progressive in recognizing the legal independence of women. In a social context, this approach also provides space for women to determine their own destiny in terms of marriage, especially in situations where the guardian is absent, his whereabouts are unknown, or even refuses to marry without a clear sharia reason. Thus, the Hanafi school places adult women in a legally equal position in making important decisions regarding marriage, as long as the decision is in accordance with the principles of Islamic teachings.

## Argumentation and Legal Basis of Imam al-Kasani and Imam al-Syirazi regarding Wali Fasiq

The position of the guardian in a marriage contract is a central element in Islamic marriage law. In the traditions of the Shafi'i and Hanafi schools, although both recognize the importance of the role of the guardian, there are fundamental differences in terms of the requirements that

must be met by the guardian, especially regarding moral and religious aspects. One crucial issue that has given rise to debate is the legitimacy of a *fasiq* guardian—that is, someone who has committed a major sin or continues to commit minor sins—to carry out a marriage contract for a woman under his guardianship.

In this context, Imam al-Kasani, a great scholar from the Hanafi school, through his main work *Bada'i as-Sana'i*, argued that immorality does not automatically nullify a person's authority as a guardian. According to him, as long as the guardian fulfills the basic requirements such as kinship, Islam, and maleness, then he is still legitimate to carry out his role as a guardian, even though he has moral defects. This view is born from the general principle of the Hanafi school which prioritizes the formal legal aspect in determining the law, as well as minimizing obstacles in the implementation of a valid marriage contract. Imam al-Kasani explains his opinion in the Book *The Storm of Sana'i* (Al-Kasani, 1989):

و كذلك العدالة ليس بشرط لثبوت الولاية عند أصحابنا, و للفاسق أن يجوز ابنه و ابنته الصغير

Translation:

Fairness is not a requirement for a guardian's decision according to our friends (*ulama* and followers of the Hanafi School) and a wicked person may marry off his minor children, both male and female.

Imam al-Kasani's explanation as outlined in the work of *Bada'i as-Sana'i* shows clearly that the inherent immorality of a guardian does not immediately invalidate the validity of his role in the marriage contract. This means that even if the guardian is known as a *fasiq* person—that is, a perpetrator of major sins or morally deviant behavior—this does not imply the invalidation of his status as a guardian in his daughter's marriage. For Imam al-Kasani, the main requirements in determining a marriage guardian are more emphasized on objective and formal legal elements, such as having a legitimate blood relationship, being Muslim, and being male. (Al-Kasani, 1989).

Furthermore, within the framework of the Hanafi school of thought that he adheres to, Imam al-Kasani is of the view that the nature of *'adalah* (justice or moral integrity and religiosity) is not an absolute requirement in determining a person's eligibility to become a guardian. According to him, adding moral requirements

such as justice can actually be an unnecessary obstacle in the implementation of the marriage contract, and has the potential to make things difficult for society in certain social conditions. Therefore, he considers that even if the guardian is known to be unjust or *fasiq*, as long as the other structural requirements are met, the marriage contract that is carried out is still considered valid and does not need to be repeated or transferred to another guardian. (Al-Kasani, 1989).

The opinion of Imam al-Kasani and also the Hanafiyyah Ulama is that a guardian is not a pillar in marriage that has an impact on whether the marriage is valid or not, so that a woman who is a virgin or a widow, has the right to marry herself to carry out the marriage, even though there is no guardian, as long as the marriage does not conflict with Islam such as marrying a non-Muslim, a mahram, and others. (Jalil & Wirnanda, 2020)

This view shows the tendency of the Hanafi school of thought to prioritize the welfare and ease in marriage matters, and to avoid administrative complications that do not have a strong basis in terms of explicit texts. In this context, Imam al-Kasani's thinking not only shows the breadth of Islamic law's approach to guardianship practices, but also reflects a bias towards social stability and the continuity of the family institution, even though it must accommodate the personal shortcomings of the guardian figure. (Jalil & Wirnanda, 2020).

The sharp differences between Imam al-Kasani and Imam al-Syirazi not only reflect the diversity of *ijtihad* methodologies in the world of classical *fiqh*, but also show how the construction of Islamic law responds to moral issues in the institution of the family. The thoughts of these two figures are important to study in a contemporary context, especially when social phenomena show that not a few guardians in practice have behavior that does not reflect Islamic values. This study will open up space to re-evaluate the provisions of *fiqh* on guardianship, while also contributing to building a more just and responsive Islamic family law system to the social realities of the community. (Al-Kasani, 1989).

Imam al-Kisani strengthened his argument by using several arguments in the texts such as in the Qur'an, Surah al-Baqarah verse 232:

فَلَا تَعْضُلُوهُنَّ أَنْ يَنْكِحْنَ أَزْوَاجَهُنَّ إِذَا تَرَاضَوْا بَيْنَهُم بِالْمَعْرُوفِ

Translation:

Do not prevent them from marrying their (future) husbands if there is mutual consent between them in an appropriate manner

According to Imam al-Kisani's view, women who have reached puberty and are of sound mind (legally competent) have full rights to determine their life path in terms of marriage, without requiring permission from a guardian. This right applies generally, both to women who are still virgins (*bikr*) and those who have been married before (*thayyib*). In this perspective, adult women have the authority to marry themselves to the man of their choice through a valid contract, as long as it does not conflict with the basic principles of *sharia*. (Al-Kasani, 1989).

However, this freedom remains within the corridor of *sharia*, especially regarding the principle of *kafa'ah* or equality between the two prospective brides and grooms. Imam Abu Hanifah emphasized that if the woman chooses a man who is not of the same caliber as her—either in terms of religion, morals, social status, or family honor—then the guardian has the right to reject the marriage. In such cases, the guardian not only has the right to oppose the woman's decision, but can also submit the case to the *qadhi* (*sharia* judge) to request the cancellation of the marriage contract that has been carried out. (Tulab, 2017).

This view shows that although the Hanafi school of thought grants women broad legal autonomy in matters of marriage, it still sets certain limitations in order to maintain the welfare and honor of the woman and her family. The principle of *kafa'ah* is seen as a protection mechanism against the possibility of social inequality or injustice in the household. Thus, Imam Abu Hanifah's view reflects a balance between respect for individual rights and efforts to maintain social harmony in the institution of marriage.

Then from the hadith of Ibn Abbas:

عن ابن عباس رضي الله عنهما أَنَّ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ: الثَّيِّبُ أَحَقُّ بِنَفْسِهَا مِنْ وَلِيِّهَا، وَالبَّكَرُ تَسْتَأْمِرُ فِي نَفْسِهَا وَأُذُنُهَا صِمَاتُهَا (رواه المسلم)

*It was narrated from Ibn Umar ra that the Prophet SAW actually said: The widow has more rights to herself than her guardian, from the girl she should ask permission for her matters. And the permission is silence (HR. Muslim)*

The hadith discussing women's rights in determining marriage shows the freedom given by sharia to women, especially those with widow status (thayyib), to make independent decisions in marriage matters. In this context, the authority of the guardian becomes limited, because widowed women are considered to have experience and maturity in living a household life, so they are considered legally and socially capable of choosing their own life partner. As long as her prospective husband is a Muslim man who is sekufu' and believes in Allah SWT, then the woman's decision to marry cannot be canceled simply because there is no approval from the guardian (Barkah & Andriyani, 2020).

Meanwhile, for women who are still virgins (bikr), the role of the guardian remains relevant but is more as a granter of permission, not as an absolute determinant of the validity of the contract. In this case, the guardian has the responsibility to ensure that the man who will marry her is a worthy person and does not endanger the safety or honor of the woman. The guardian is allowed to refuse permission if the prospective husband does not meet the basic criteria of Islam, or there is a strong concern that the marriage will cause injustice or potential injustice to the woman. (Barkah & Andriyani, 2020).

This approach emphasizes that in Islamic law there is a balance between the protection of women's rights and the responsibility of the guardian as a guardian of the welfare. However, the basic principle remains in favor of the ability of mature and sane women to have control over their marriage decisions, in accordance with the principles of justice, faith, and equality in Islamic marriage law.

Then the hadith narrated by Imam Muslim:

أَنَّ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ: الْأَيْمُ أَحَقُّ بِنَفْسِهَا مِنْ وَلِيِّهَا (رَوَاهُ مُسْلِمٌ وَأَبُو دَاوُدَ وَالتِّرْمِذِيُّ وَالنَّسَائِيُّ وَمَالِكٌ فِي الْمَوْطَأِ)

*Indeed, the Prophet SAW said: An unmarried woman has more rights over herself than her guardian* (HR. Muslim, Abu Daud, Tirmidhi, Nasai, and Malik in al Muawatho')

The hadith further emphasizes that a woman, whether a virgin (bikr) or a widow (thayyib), in principle has authority over herself in determining her choice of marriage. In this framework, the right and power to marry herself is not entirely in the hands of the guardian, but rather in the woman herself as an independent

legal subject. This is especially true in the context of women who have reached maturity and intellectual competence, where the sharia recognizes their right to make important decisions in their lives, including choosing a life partner.

Thus, the role of the guardian in the context of marriage cannot be understood as the holder of absolute authority who can cancel or impose his will on the prospective bride. On the contrary, the guardian only functions as a companion or protector who helps ensure that the woman's decision does not conflict with the principles of sharia and is carried out consciously and without coercion. In essence, control over the woman in this case remains in her own hands, because Islam recognizes individual sovereignty within the limits determined by Divine law.

In contrast to the opinion expressed by the Hanafi scholars, Imam al-Syirazi from the Syafi'i school of thought emphasized that the existence of a guardian is an essential requirement for the validity of a marriage. In his view, the absence of a guardian in a marriage contract renders the marriage null and void according to sharia. Therefore, the role of a guardian is not merely an administrative complement or a protective element, but rather a fundamental element that cannot be ignored in the structure of Islamic marriage law.

Imam al-Syirazi, a prominent scholar from the Syafi'i school of thought in his book al-Muhadzdzab, emphasized that a guardian must have the characteristic of 'adalah, namely justice in the sense of religiosity and good moral integrity. In this perspective, immorality is a strong reason to prevent someone from becoming a guardian, because the role of a guardian is not merely administrative, but also represents the interests and honor of the prospective bride in a marriage contract that has the value of worship. Therefore, if a guardian is known to be immoral, then his guardianship can be transferred to a more entitled guardian or to a judge (guardian judge), in order to maintain the validity and honor of the marriage contract itself.

The urgency of the presence of a guardian in Imam al-Syirazi's view is motivated by sharia and social considerations. Normatively, he refers to the hadith of the Prophet ﷺ which reads: "Marriage without a guardian is not valid" (HR. Abu Dawud, al-Tirmidhi, and others). This hadith is the main basis in the Shafi'i school of thought that guardians are pillars of marriage that should

not be ignored. Socially, the presence of a guardian is considered important to protect women's rights, prevent the possibility of coercion or carelessness in choosing a partner, and maintain family honor and the social order of society.

Thus, Imam al-Syirazi's view emphasizes the importance of the involvement of a guardian as a form of protection of the welfare and moral values in marriage. The absence of a guardian, in this view, not only damages legal formalities, but also has the potential to cause problems in household life due to the incompatibility or unpreparedness of the parties involved in the contract.

Imam al-Syirazi explains more clearly in his book al-Muhadzzab (Al-Syirazi, 1990):

لا يجوز أن يكون فاسقا على المنصوص، لأنها ولاية فلم تثبت مع  
الفسق كولاية المال

*It is not permissible (valid) for a guardian to have a wicked nature based on the texts, because a guardian cannot be appointed with a wicked guardian, and likewise the guardian cannot guard (the woman's) property.*

In contrast to the views of Imam al-Kasani and the majority of scholars of the Hanafi school who do not consider a guardian as a pillar or requirement for a valid marriage, Imam al-Syirazi of the Syafi'i school, in line with the opinion of the majority of scholars, emphasized that the existence of a guardian is an essential part of the marriage contract. In this perspective, a guardian does not only function as a formality, but as a fundamental element that determines the validity of a marriage. Therefore, if a woman marries herself without a legal guardian, then the marriage is considered invalid according to sharia law. In fact, the consequences that arise are not merely administrative in nature, but also have an impact on the status of the relationship which is considered an unlawful relationship. As long as the marriage takes place without the involvement of a legal guardian, the husband-wife relationship that occurs is considered as ongoing adultery according to the view of the majority of fiqh. This assertion shows how important the position of the guardian is in maintaining the honor and legitimacy of marriage in Islamic law, as well as a form of protection for women so that they do not fall into marriage practices that deviate from sharia.

Not only does it require a guardian to be a legal pillar of marriage, Imam al-Syirazi also

emphasized that a legal guardian must have a just nature and not fall into wickedness. For him, justice is not just an additional criterion, but an absolute requirement that determines whether someone is worthy of being a guardian. Justice here is understood as consistency in carrying out obedience to Allah and avoiding immoral acts, both big and small. A guardian who is known as fasiq - that is, a perpetrator of major sins or who continually commits minor sins - is considered to have lost his just nature, so he is not fit to represent women in marriage contracts. According to Imam al-Syirazi, guardians like this cannot be trusted to carry out important roles involving the honor and future of women in marriage. Therefore, if the closest guardian is proven to be fasiq, then his guardianship can be replaced by the next guardian in order of lineage who meets the requirements of justice, or even by a judge, in order to maintain the validity of the contract and the glory of marriage law in Islam. (Al-Syirazi, 1990).

Some of the arguments used by Imam al-Syirazi to strengthen his argument include the hadith from Imam Syafi'i:

عن أبي بردة عن أبي موسى عن أبيه رضي الله عنهما لا نكاح إلا  
بولي مرشد (رواه الشافعي سننه و قال الامام أحمد : أنه أصح في  
الباب

*From Abu Burdah from Abu Musa from his father, Rasulullah SAW said: Marriage is not valid without a fair guardian (Imam Syafi'i has narrated in his musnad with authentic relatives, Imam Ahmad said this hadith is the most authentic hadith in the chapter on marriage*

The hadith explicitly emphasizes that one of the main elements in marriage that cannot be ignored is the presence of a guardian. This shows that a guardian is not just a complement in the marriage contract procession, but rather a part that greatly determines the validity of the marriage itself. Furthermore, this hadith not only mentions the importance of the presence of a guardian, but also provides qualifications that must be met by the guardian, namely the nature of justice. The explanation at the end of the hadith which states that the guardian must be just provides an explicit limitation that a guardian who will marry off his daughter must not have a fasiq nature, because wickedness will eliminate the nature of justice which is the main requirement. Thus, this hadith not only establishes the role of the guardian in the marriage contract, but also emphasizes the moral and religious qualities that the guardian must

have so that the marriage takes place legally and in accordance with the guidance of the sharia (Al-Syirazi, 1990).

Next is the hadith from Aisyah ra:

ما رواه الزهري عن عائشة وهو أن النبي صلى الله عليه وسلم قال: أيما امرأة نكحت بغير إذن وليها فنكاحها باطل

*It was narrated by Zuhri from Aisyah that the Prophet SAW said: any woman who marries without the permission of her guardian, her marriage is invalid.*

Based on the hadith explained, it is clear that the position of the guardian in a marriage contract is not a secondary matter or merely a formality, but rather an essential part that determines whether a marriage is valid or not in the eyes of Islamic law. The hadith states that "a marriage is invalid without a guardian," which contains a clear meaning that the presence and permission of the guardian are conditions that cannot be ignored. This means that if a woman marries herself off without a guardian—either because of absence, refusal of a legitimate guardian, or because she follows the views of a particular school of thought—then the marriage, from the perspective of the majority of scholars including the Shafi'i school of thought which is widely adopted in Indonesia, is declared null and void according to Islamic law. (Al-Syirazi, 1990).

The consequences of the absence of a guardian are very serious and not only have legal implications, but also moral and spiritual implications. Couples who live a household life in an invalid marriage due to the absence of a guardian are considered to be in a state of continuous adultery as long as they continue to live together in a bond that is not recognized by sharia law. This does not only concern the administrative or procedural aspects of registering a marriage, but touches on the core of the sanctity of marriage itself, which is the foundation for the formation of a *sakinah*, *mawaddah*, and *rahmah* family. (Al-Syirazi, 1990).

Furthermore, the invalidity of the marriage can also have implications for other legal rights such as inheritance rights, the status of children's lineage, and legal protection for women. A wife in an invalid marriage cannot claim civil rights such as maintenance, protection, and legal recognition, because the marriage bond is considered to have never occurred legally in *fiqh*. Therefore, the urgency of the guardian's role in the marriage contract is not only to maintain legal order, but also to maintain the honor,

blessings, and protection of women as the more vulnerable party in the social structure.

Then the Hadith from Abu Hurairah:

ما رواه ابن ماجه، والدارقطني عن أبي هريرة أن النبي صلى الله عليه وسلم قال: لا تزوج المرأة المرأة، ولا تزوج المرأة نفسها

*It was narrated by Ibn Majah, and Daru Quthni from Abu Hurairah RA that the Prophet SAW said: Don't let a woman marry another woman, and don't let a woman marry herself.*

The above hadith emphasizes the position of women in Islamic marriage law, especially regarding their rights and authority in carrying out the marriage contract. In the view of the majority of scholars who refer to the hadith, women do not have the authority to perform the *ijab* or marry themselves, whether they are still virgins or have the status of widows. The authority to pronounce the *ijab* and represent women in the marriage contract lies entirely in the hands of the guardian, because the guardian is one of the pillars that must be fulfilled so that the marriage is considered valid according to sharia. (Al-Syirazi, 1990).

This position does not mean degrading women's dignity, but rather is understood as a form of protection for their honor and benefit. Islam positions guardians as parties who have a moral and social responsibility to ensure that the women under their care do not marry someone who is unfit, or in conditions that are detrimental. Therefore, the *ijab*—as the core part of the contract process—is carried out by the guardian, while the woman gives her consent or approval for this choice. (Al-Syirazi, 1990).

Thus, this hadith becomes a strong foundation for the view that women do not have full authority over themselves in terms of marriage contracts. This authority is given to the guardian as a form of legal caution in maintaining the purity and validity of the contract, as well as protecting women from potential injustice or regret in the future. This approach also reflects the principle of responsibility and honor that is strictly regulated in Islamic law in order to ensure that marriage is not only formally valid, but also maintains its moral and social values.

### **Analysis of the opinions of Imam al-Kasani and Imam al-Syirazi regarding Wali Fasiq**

- a. Differences in the Conditions and Pillars of Marriage



In Islamic law, the position of the guardian in marriage is one of the important issues debated by scholars, especially regarding its status as a pillar or requirement for the validity of marriage. In this case, there is a fundamental difference between the views of Imam al-Kasani from the Hanafi school and Imam al-Syirazi from the Syafi'i school.

Imam al-Kasani, in his monumental work *Bada'i al-Shana'i*, firmly stated that a guardian is not included in the pillars or conditions of a marriage contract. According to him, a woman who has reached puberty and is of sound mind, whether a virgin or a widow, has full rights over herself to marry herself without having to involve a guardian. This view is rooted in the principle of freedom of action (*tasarruf*) in the law of *muamalah*; if someone is legally competent, then he has the authority to perform any contract including a marriage contract, as long as the general conditions such as the consent and compatibility of the partner (*kafa'ah*) are met. Thus, the role of the guardian in al-Kasani's view is complementary, not an element that determines whether a marriage contract is valid or not. On the other hand, Imam al-Syirazi in *al-Muhadzdzab* emphasized that a guardian is a pillar that must be present in a marriage contract, and without a guardian, the marriage is considered invalid. He based his argument on the words of the Prophet Muhammad SAW: "There is no marriage except with a guardian." According to Syirazi, this hadith shows that the presence of a guardian is not just a complement, but is an essential part of the structure of the marriage contract. Therefore, women cannot marry themselves, even if they are mature and of sound mind, because the right to carry out the consent in the contract rests with the guardian.

Thus, these differences of opinion show two different approaches to Islamic jurisprudence. The Hanafi school, through Imam al-Kasani, views marriage more as a transaction contract that can be carried out by adult women independently, while the Shafi'i school represented by Imam al-Syirazi places marriage as a contract that is social and public in nature, so it must be represented by a guardian as a form of protection and social control over the validity of the marriage.

#### **b. The Difference Between the Concepts of Justice and Fasiq for a Guardian**

In Islamic legal studies, the concepts of justice (*'adalah*) and wickedness (*fisq*) have an important influence on the validity of a guardian

in marriage, but these two concepts are understood differently by scholars from various schools of thought. Imam al-Kasani of the Hanafi school and Imam al-Syirazi of the Syafi'i school provide contrasting perspectives in defining and determining the impact of these two characteristics on the status of a guardian.

Imam al-Kasani explained that fairness, despite having high moral values and ideals, is not an absolute requirement for the validity of guardianship in a marriage contract. In his view, the essence of guardianship is the legal lineage relationship between the guardian and the woman to be married. In other words, a man who is a woman's father, grandfather, or closest male relative is still considered valid as a guardian, even though he is known as a *fasiq*, namely a perpetrator of major sins or someone who consistently commits minor sins. Imam al-Kasani is of the opinion that there is no *syar'i* text that explicitly aborts the right of guardianship just because of wickedness. Therefore, in the Hanafi school, guardianship rights are based more on the structure of family relationships than on personal moral worthiness.

In contrast to that, Imam al-Syirazi, one of the important figures of the Shafi'i school, put fairness as the main condition for the validity of a guardian. For him, a guardian is not just a family representative, but also a symbol of protection and honor for women in a marriage bond. Therefore, only people who are known to maintain religious integrity, do not commit major sins, do not persist in minor sins, and have a good social reputation can become guardians. If the closest guardian in order of lineage is known to be a *fasiq*, then his guardianship rights are terminated and transferred to the next guardian who meets the requirements of justice. If there is no fair line guardian, then the guardianship can be taken over by a judge or *qadhi*.

This difference shows that the Hanafi school tends to emphasize the formal and structural legal aspects in determining the validity of a guardian, while the Shafi'i school emphasizes moral worthiness and personal integrity as the basis for the validity of the guardian's role in a marriage contract. Consequently, in the Hanafi school, a marriage is still considered valid even if the guardian is a *fasiq*, as long as there is no violation of the basic provisions of the sharia. Whereas in the Shafi'i school, the involvement of a *fasiq* guardian can cause the marriage to be

considered invalid and lead to the cancellation of the contract.

c. Differences in Istinbath Methods

In analyzing the status of a fasiq guardian in a marriage contract, the legal istinbath approach used by Imam al-Kasani from the Hanafi school and Imam al-Syirazi from the Syafi'i school shows fundamental methodological differences. Imam al-Kasani uses an istinbath approach based on qiyas and istihsan, and is more selective in accepting the hadith ahad as a legal basis. Based on this method, he emphasized that justice is not a requirement for the validity of a guardian, so that even if someone has the status of fasiq, he is still valid to act as a guardian in a marriage. This approach is based on the principle that the marriage contract has similarities with other contracts such as buying and selling, which do not require justice from the perpetrators as long as general requirements such as puberty and sanity are met. Thus, the Hanafi school prioritizes the public interest and prevents difficulties in social life by still allowing fasiq guardians to marry off their daughters.

This is different from Imam al-Syirazi who represents the textualist (nash-oriented) approach of the Syafi'i school. He based his opinion on authentic hadiths that emphasize the necessity of a guardian in marriage, and in more detail mentions that the guardian must be just. In this case, Imam al-Syirazi rejects the legality of a fasiq guardian, because his/her wickedness is considered to eliminate the requirement of justice which is a pillar in the marriage contract. Imam al-Syirazi's istinbath method prioritizes the strength of the nash argument over qiyas, so that even though there is qiyas logic that can relax the guardian requirements, the hadith text is considered stronger and more binding. Therefore, if the marriage is carried out by a fasiq guardian, then the contract is considered invalid according to sharia law, and the relationship between husband and wife in the marriage can have implications for ongoing adultery as long as the marital status is not corrected by a legitimate guardian.

The difference in the istinbath method between the two scholars has a direct impact on the validity of the marriage contract involving a fasiq guardian. If using the Hanafi school of thought approach, the marriage is still considered valid even if the guardian is fasiq. However, if following the view of the Syafi'i school of thought, the marriage is invalid and must be corrected by

presenting a just guardian or a substitute guardian (judge guardian). This difference shows that understanding the structure of guardianship in Islam is highly dependent on the ushul fiqh approach of each school of thought in exploring the law from the sources of sharia.

Aspect	Imam al-Kasani (Hanafiyyah)	Imam al-Shirazi (Shafi'iyyah)
Guardian Requirements	There does not have to be a guardian, and if one is needed, it does not have to be fair (it is permissible to be fasiq).	There must be arguments and must be fair (cannot be fasiq)
Istinbath Method	Qiyas, istihsan, selective towards Ahad hadith	The text of the hadith is authentic, textual
Views on the Fasiq Guardians	Still legally a guardian	Invalid as guardian
Impact of Marriage Law	Marriage remains valid	Marriage cancelled

CONCLUSION

Based on the previous explanation, it can be understood that according to Imam al-Kasani, a guardian who has a wicked nature is still valid to carry out the role of guardian in a marriage contract if the presence of a guardian is required. His testimony as a guardian is still considered valid, so that the marriage contract that is carried out is considered valid according to his view. In contrast to Imam al-Kasani, Imam al-Syirazi is of the opinion that the presence of a guardian is a condition as well as a pillar in marriage. Therefore, the presence of a guardian in a marriage contract is very essential. Furthermore, Imam al-Syirazi requires that the guardian must have a just nature and not be wicked. Because, if the guardian who leads the contract is a wicked person, then according to him, the marriage contract is invalid.

The fundamental difference between Imam al-Kasani and Imam al-Syirazi lies in determining the position of guardian in marriage. Imam al-Kasani, who represents the views of the Hanafi school of thought, does not stipulate a guardian as a pillar or condition for the validity of a marriage contract. Therefore, a woman who is mature and sensible - whether a virgin or a widow - is allowed to marry herself, as long as other conditions such as kafa'ah and willingness are met. Meanwhile, Imam al-Syirazi from the Shafi'i school of thought believes that guardians are pillars that cannot be abandoned in marriage. Without a guardian, the marriage contract becomes invalid and can cause the relationship to be considered adultery according to the Shari'a.

Differences of opinion are also seen in the assessment of the just and fasiq nature of a guardian. Imam al-Kasani is of the opinion that the just nature is not included in the requirements for the validity of a guardian, so a fasiq guardian can still marry off his daughter as long as it does not violate the principles of sharia. On the other hand, Imam al-Syirazi requires that a guardian must have the nature of being just and not being fasiq. He is of the view that fasiq—that is, a perpetrator of a major sin or one who continuously commits minor sins—can damage the moral integrity of the guardian and impact the validity of the marriage contract.

In terms of the method of legal istinbath, Imam al-Kasani tends to use the rational approach (ra'yu) and istihsan which is typical of the Hanafi school of thought, which opens up more space for ijtihad and benefit in determining the law. In contrast, Imam al-Syirazi uses a textual (bayani) and ta'abbudi approach, as is common in the Shafi'i school, which is very strict in adhering to the literal meaning of the texts of the Qur'an and hadith.

Overall, this study can be concluded that the differences of opinion of these two great scholars do not only stem from the understanding of the texts alone, but also from the methodological approach, the legal principles of the school of thought, and the interpretation of the role of guardians in maintaining the dignity and rights of women in marriage. Therefore, these differences of opinion are important to understand contextually, especially in formulating legal guidelines that are fair, realistic, and adhere to sharia principles.

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